

<p style="text-align: right;">Page 157</p> <p>1 Q This is Mr. Aguiar?</p> <p>2 A Yes.</p> <p>3 Q Again this opinion that Mr. Aguiar set forth in 11,</p> <p>4 the opinion that he was contributorily negligent is</p> <p>5 only relevant if in fact the brake was not set and</p> <p>6 that was why the door dropped, correct?</p> <p>7 A That's correct.</p> <p>8 Q Did you read Mr. Aguiar's affidavit? I show you a</p> <p>9 copy of the affidavit of Carlos Aguiar.</p> <p>10 MR. REGAN: It's part of his file.</p> <p>11 MR. ANDERSON: We'll mark exhibit</p> <p>12 number -- I had previously put a sticker on a blank</p> <p>13 piece of paper and we never drew on it. I took it</p> <p>14 off that piece of paper and put it on the affidavit</p> <p>15 of Carlos Aguiar.</p> <p>16 [Exhibit 9 marked for identification]</p> <p>17 Q Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Did you have an opportunity to review that affidavit</p> <p>20 previously?</p> <p>21 A Yes.</p> <p>22 Q What part of that affidavit do you not agree with?</p> <p>23 A (No response)</p> <p>24 Q First of all, I understand you weren't on the boat</p>	<p style="text-align: right;">Page 159</p> <p>1 exceed the pulling power of the winches so that</p> <p>2 whatever you haul up, you can hold?</p> <p>3 A Whatever you haul up, that is within the working</p> <p>4 capacity of the winch and if you are trying to haul</p> <p>5 something that is heavier than the winch can handle,</p> <p>6 then the brake wouldn't handle it, either.</p> <p>7 Q You can't get it up to the boat?</p> <p>8 A Right. Can't get it up to the boat, you are going</p> <p>9 to break something.</p> <p>10 Q If you get hung down on something like a wreck where</p> <p>11 the thing is not going anywhere, you are wrapped</p> <p>12 around it, you can haul your winches but at some</p> <p>13 point your winches are just going to stall out,</p> <p>14 correct?</p> <p>15 A Or a wire is going to brake or the nets will tear or</p> <p>16 you will pull yourself down by the stern and flood</p> <p>17 the vessel. A lot of bad things can happen.</p> <p>18 Q But you would agree with me if you can get it up off</p> <p>19 the bottom and up to the stern so the doors are</p> <p>20 hanging port and starboard side, whatever that load</p> <p>21 is, whatever that load is, the winches should be</p> <p>22 able to hold it if they are functioning properly?</p> <p>23 A Yes.</p> <p>24 Q The affidavit of Carlos Aguiar basically says that</p>
<p style="text-align: right;">Page 158</p> <p>1 at the time of the accident, correct?</p> <p>2 A Right.</p> <p>3 Q And, therefore, you can't either agree or disagree</p> <p>4 when he says a specific fact other than you can say</p> <p>5 you don't think that is possible.</p> <p>6 A Other than to the extent that if a fact in his</p> <p>7 affidavit is different from what he testified to in</p> <p>8 his deposition or is contrary to what the physical</p> <p>9 evidence would suggest is reasonable under the</p> <p>10 circumstances, then I would say that he would have</p> <p>11 to go through each item line by line to find areas</p> <p>12 where I would agree or disagree.</p> <p>13 Q Do you believe it's possible that excessive amount</p> <p>14 of mud could cause the door to drop down into the</p> <p>15 water, mud in the net?</p> <p>16 A No, I don't.</p> <p>17 Q You would agree with me no matter how much is the</p> <p>18 main winch's, how much the weight that the main</p> <p>19 winch's haul up of the net, that the brake should</p> <p>20 hold whatever that weight is?</p> <p>21 A Under normal circumstances, unless they are hauling</p> <p>22 up a load that is so heavy that it exceeds the</p> <p>23 braking power of the mechanism.</p> <p>24 Q But shouldn't the braking power of the winch always</p>	<p style="text-align: right;">Page 160</p> <p>1 if the door dropped, it had to have been because the</p> <p>2 line was, excuse me, wire was paid out from the main</p> <p>3 winch, correct?</p> <p>4 MR. REGAN: Objection.</p> <p>5 A I'm not sure I understand.</p> <p>6 Q In a nutshell what the affidavit of Carlos Aguiar</p> <p>7 says is if the door dropped, it must be the case</p> <p>8 that the line was let out from the winch -- Strike</p> <p>9 that. Withdraw the question. I'll move on.</p> <p>10 Directing your attention to page three of</p> <p>11 the affidavit of Carlos Aguiar, do you see the</p> <p>12 drawing on page three of the affidavit of Carlos</p> <p>13 Aguiar?</p> <p>14 A Yes.</p> <p>15 Q That is a schematic drawing?</p> <p>16 A Yes.</p> <p>17 Q Do you believe that is an accurate schematic drawing</p> <p>18 of the winch, wire, gallus frame, block, door and</p> <p>19 net mechanism?</p> <p>20 A It's a basic schematic of one side of the vessel.</p> <p>21 It doesn't show the other side, the other block,</p> <p>22 other door or wire connected to the door. It's a</p> <p>23 two-part system, not a one-part system.</p> <p>24 Q Correct. But with regard to the mechanical aspects</p>

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<p style="text-align: right;">Page 161</p> <p>1 of the system, do you believe that schematic drawing</p> <p>2 is correct?</p> <p>3 A Yes, that is a fairly accurate rendition of the</p> <p>4 system.</p> <p>5 Q Does that steel wire, does that stretch?</p> <p>6 A Does it stretch?</p> <p>7 Q Yes.</p> <p>8 A The towing wire?</p> <p>9 Q Yes.</p> <p>10 A If it stretches, it's an imperceptible amount of</p> <p>11 stretch.</p> <p>12 Q Meaning it has nothing to do with this case?</p> <p>13 A No.</p> <p>14 Q The door didn't drop because of the elasticity of</p> <p>15 the towing wire?</p> <p>16 A I never said that.</p> <p>17 Q As I understand your opinion, you think that the</p> <p>18 door did not in fact drop relative to the towing</p> <p>19 block?</p> <p>20 A No.</p> <p>21 Q But in fact the boat rolled, the door swung out --</p> <p>22 A And down.</p> <p>23 Q -- and the whole boat, gallus frame, block and</p> <p>24 everything moved toward the water?</p>	<p style="text-align: right;">Page 163</p> <p>1 Q That's assuming that his testimony was truthful,</p> <p>2 that in fact he never moved the controls, correct?</p> <p>3 A That he never moved the controls and there was</p> <p>4 nothing wrong with the brake and he never had a</p> <p>5 problem with the brake before or after the incident.</p> <p>6 Q Mr. Aguiar testified in his deposition that the door</p> <p>7 lifted up and dropped down. Do you remember that</p> <p>8 testimony?</p> <p>9 A Correct, and that is a very, very accurate</p> <p>10 description of the movement that you would get in a</p> <p>11 seaway with a boat pitching and rolling.</p> <p>12 Q How much pitching and rolling are you talking about?</p> <p>13 A I wouldn't say very much.</p> <p>14 Q An inch?</p> <p>15 A We went through this before. I don't know, an inch</p> <p>16 or two inches. He described that it moved and the</p> <p>17 chain came taught. Mr. Lima described the boat was</p> <p>18 rolling, it always moves, it's a common occurrence.</p> <p>19 There is no evidence that the wire slipped because</p> <p>20 Mr. Lima who I believe was truthful in his</p> <p>21 deposition does not say that the wire slipped and he</p> <p>22 had to haul it back in. If the wire slipped, he</p> <p>23 would have had to haul it back in. If it slipped</p> <p>24 and the brake was not holding, it would have gone</p>
<p style="text-align: right;">Page 162</p> <p>1 A Yes.</p> <p>2 Q The movement toward the water gave Mr. Aguiar the</p> <p>3 perception that the door was dropping?</p> <p>4 A Yes.</p> <p>5 Q But in fact it was not moving relative to him,</p> <p>6 correct?</p> <p>7 A It was moving relative to him because it was moving</p> <p>8 away from the fixed platform on which he was</p> <p>9 standing.</p> <p>10 Q It was only moving laterally away from him, it</p> <p>11 actually wasn't moving vertical?</p> <p>12 A He was moving down, too. He was moving down toward</p> <p>13 the water, also.</p> <p>14 Q I got it. Okay. So you don't think this mud in the</p> <p>15 note has anything to do with this case?</p> <p>16 A I don't believe it does.</p> <p>17 Q So if somebody testified that mud in the net would</p> <p>18 cause the door to drop, you would disagree with</p> <p>19 that?</p> <p>20 A My opinion is based on the part that Mr. Lima did</p> <p>21 not testify that the wire moved. There was no</p> <p>22 testimony from him as the winch operator that the</p> <p>23 wire slipped off the drum at the time of the</p> <p>24 incident.</p>	<p style="text-align: right;">Page 164</p> <p>1 more than just the distance to make the chain come</p> <p>2 taught, it would have kept on going.</p> <p>3 Q If it did keep on going and the door ended up</p> <p>4 completely in the water --</p> <p>5 A He would have kept on going down to the bottom.</p> <p>6 Q -- and had to be hauled back up again, that would</p> <p>7 suggest that it wasn't from the rolling of the boat,</p> <p>8 it was someone let line out of the winch, correct?</p> <p>9 A Or the brake was let go.</p> <p>10 Q Or the brake was let go, but somehow the line came</p> <p>11 out of the winch?</p> <p>12 A That's correct.</p> <p>13 Q If this occurs -- They were out on George's Bank</p> <p>14 area fishing at the time of the accident?</p> <p>15 A Yes. I'm not sure of their exact position.</p> <p>16 Q At some point east of New Bedford?</p> <p>17 A Yes.</p> <p>18 Q In New England waters?</p> <p>19 A Yes.</p> <p>20 Q In New England waters east of New Bedford or east of</p> <p>21 Nantucket let's say, what is one- to three-foot</p> <p>22 seas, how would you characterize those?</p> <p>23 A East of Nantucket offshore of New England you have</p> <p>24 sea swells, you have wind-driven sea state, you have</p>

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<p style="text-align: right;">Page 165</p> <p>1 seas caused by shoaling on George's Banks based on</p> <p>2 the movement of the water over the shoal area from</p> <p>3 deep water. How I would characterize it? I would</p> <p>4 characterize it as a seaway that is constantly</p> <p>5 moving and you have tides and current that are</p> <p>6 moving in opposite directions all the time. It's a</p> <p>7 very dynamic waterway that is world renown.</p> <p>8 Q The question was how would you characterize one to</p> <p>9 three feet? I am looking for an answer like that is</p> <p>10 an average or really calm.</p> <p>11 A One to three feet would be a good day, a calm day.</p> <p>12 Q You are aware that on many commercial fishing</p> <p>13 vessels they fish upward to ten- to 15-foot seas?</p> <p>14 A Yes.</p> <p>15 Q And when they start getting above 15 feet, some</p> <p>16 people fish, some people don't?</p> <p>17 A Right.</p> <p>18 Q That's a very calm day.</p> <p>19 A That's a good day.</p> <p>20 Q If what you are saying is correct with respect to</p> <p>21 what actually caused the chain to become taught and</p> <p>22 if that occurred on a calm day, would you agree with</p> <p>23 me that it must be the case that that chain is</p> <p>24 getting taught all the time?</p>	<p style="text-align: right;">Page 167</p> <p>1 that before you set stopper chains or safety chains</p> <p>2 or ropes, you have to make sure that you are doing</p> <p>3 it at the period of time when the boat is moving</p> <p>4 that it's safe to do it.</p> <p>5 Q I'm only talking specifically of the chain in the</p> <p>6 pelican hook that Mr. Aguiar was holding onto at the</p> <p>7 time of his accident, and I'm specifically talking</p> <p>8 about the MY WAY.</p> <p>9 A I answered that.</p> <p>10 Q Is it your opinion that on that vessel with that</p> <p>11 chain that a crew member in order to safely secure</p> <p>12 the door would have to time the closing of the</p> <p>13 pelican hook with the roll of the boat?</p> <p>14 A I'm saying it's possible under certain circumstances</p> <p>15 he would have to do that. But before you put your</p> <p>16 hand into any position and any objects that are</p> <p>17 moving or can be moving, you have to make sure that</p> <p>18 it's safe to do so. So what would a prudent person</p> <p>19 do is get into that situation, observe the dynamics</p> <p>20 at that period of time, and make his judgment and</p> <p>21 action coincidental with his finding of the safe</p> <p>22 working practice at that moment in time. You can't</p> <p>23 make a general overall statement that is saying on</p> <p>24 the MY WAY it's this way on other boats it's a</p>
<p style="text-align: right;">Page 166</p> <p>1 A No, I would agree that it's a timing evolution. You</p> <p>2 have to time it and be aware of the movement that</p> <p>3 you have at the present time and make sure that</p> <p>4 before you try to secure that hook, that you are</p> <p>5 confident that the movement is in the direction that</p> <p>6 will afford you the best opportunity to set the hook</p> <p>7 and not at the time the vessel is rolling away from</p> <p>8 you. You have to look at it and say, okay, now I'm</p> <p>9 going to do it. If it's, the situation that the</p> <p>10 boat is rolling the other way, you can say I'm going</p> <p>11 to wait for the roll to come back the other way</p> <p>12 before I try to secure the hook.</p> <p>13 Q So you are saying on the FISHING VESSEL MY WAY in</p> <p>14 order to secure the pelican hook, you have to time</p> <p>15 it with the roll of the vessel?</p> <p>16 A On every boat you have to time things with the roll</p> <p>17 and the movement of the boat.</p> <p>18 Q I'm not talking about every boat, I'm talking about</p> <p>19 the FISHING VESSEL MY WAY. Is it your opinion on</p> <p>20 the FISHING VESSEL MY WAY in order to safely secure</p> <p>21 the door to the safety chain, a fisherman would have</p> <p>22 to time the closing of the pelican hook and the</p> <p>23 securing the mechanism with the roll of the boat?</p> <p>24 A I'm saying that on any boat including the MY WAY</p>	<p style="text-align: right;">Page 168</p> <p>1 different way. It's a safe practice on any boat at</p> <p>2 sea, whether it's a sailboat or fishing boat.</p> <p>3 Q Safe practice to do what?</p> <p>4 A To make sure your hands are clear and the work that</p> <p>5 you are going to be performing can be done in a safe</p> <p>6 way to not result in injury.</p> <p>7 Q It's always true it's a safe practice to do work in</p> <p>8 a way that will not result in injury, you would</p> <p>9 agree with me?</p> <p>10 A Yes.</p> <p>11 Q It's tautology?</p> <p>12 A Correct.</p> <p>13 Q I'm asking you with respect to the MY WAY, you are</p> <p>14 an expert on the practices, safe practices on the</p> <p>15 MY WAY, correct?</p> <p>16 A At that particular evolution. I have not gone</p> <p>17 aboard the MY WAY to evaluate the safe working</p> <p>18 practices on every aspect of this operation. I'm</p> <p>19 saying in this instance for securing the safety</p> <p>20 chain, he should have observed the movement of the</p> <p>21 boat and the door and his chain in his hand, two</p> <p>22 hands to make sure he wasn't putting his hand into</p> <p>23 something is that too risky.</p> <p>24 Q The assumption is that the door was even swinging,</p>

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